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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/766,922 | 01/30/2004 | Koki Okamura | KP-9698 | 3946 |
| 21254 | 7590 | 05/22/2007 | EXAMINER | |
| MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC 8321 OLD COURTHOUSE ROAD SUITE 200 VIENNA, VA 22182-3817 | | | LEE, JOHN W | |
| | | ART UNIT | PAPER NUMBER | |
| | | 2624 | | |
| | | MAIL DATE | DELIVERY MODE | |
| | | 05/22/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|------------------------------|------|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/766,922 | OKAMURA, KOKI | |
| | Examiner | Art Unit John Wahnkyo Lee | 2624 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 January 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>20040130</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. An initialed and dated copy of Applicant's IDS form 1449, Paper No. 20040130, is attached to the instant Office action.

Claim Objections

2. Claims 10 is objected to because of the following informalities: There is a misspelling on the third claim limitation of claim 10, which is "... img ..." Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 10 and 11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 10 and 11 are drawn to functional descriptive material NOT claimed as residing on a computer readable medium. MPEP 2106.IV.B.1(a) (Functional Descriptive Material) states:

"Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer."

"Such claimed data structures do not define any structural or functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized."

Claims 10 and 11, while defining a program, does not define a "computer-readable medium" and is thus non-statutory for that reasons. A program can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" in order to make the claim statutory.

"In contrast, a claimed computer-readable medium encoded with the data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory." - MPEP 2106.IV.B.1(a)

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takiguchi (US 5,130,935) in view of Adobe Photoshop 7.0 ("Adobe Photoshop 7.0: Classroom in a Book", hereinafter, "Photoshop"), and further in view of Yamakawa (US 6,184,860).

Regarding claim 1, Takiguchi discloses a skin color correction image processing apparatus using image data from a facial image (Fig. 7) using a computer (Fig. 4; col. 2, lines 64-68; col. 3, lines 1-5). The invention of Takiguchi measures the quantity of the image data within a predetermined region of color space, obtains a representative color value for the image data within that region, and corrects the color image data based on the representative

value and the measured quantity (abstract; Figs. 2-3, 5, 8-11). However, Takiguchi does not disclose or teach the claim limitations (b), (c), and (d). Instead of Takiguchi, Photoshop discloses claim limitation (c) and Yamakawa's invention reads on claim limitation (b) and (d). Photoshop is a well known and widely used image processing software that can change any images such as facial image to change the color of skin, hair, teeth, and even eyes by running on a computer and displaying on a monitor with a cursor on the screen by detecting or pointing the area that the user wants to modify by using the tools such as the Marquee tool, Lasso tool, and the Magic wand tool (pages 104-125). Yamakawa discloses an image editing apparatus that suggests various method of correction of the selected partial picture data in the form of a menu together with the expected result of correction, so that the operator can effect correction by selecting one of the suggested items of correction, whereby the correction of a picture can be conducted easily (col. 23, lines 9-17).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Photoshop and Yamakawa's invention in Takiguchi's invention to provide an image editing apparatus that enables the operator to efficiently process and edit various images as suggested by Yamakawa (col. 1, lines 11-15).

Regarding claims 2, 4, and 6-7, it is well known and widely used that Photoshop can be used to correct the color of the skin, red-eye, teeth, and hair of the facial image. Takiguchi further teaches that the number of image data which exist within a predetermined region on a (u,v), chromaticity diagram and which are among input color image data is counted, and when the counted number is smaller than a predetermined value, the correcting operation is not executed (abstract). The difference between a predetermined coordinate point and a coordinate point at which the largest counted number of image data exist is obtained, and the image data within the predetermined region are corrected (abstract).

Regarding claims 3, 5, and 9, Photoshop further has functions, that the user can select different colors for changing the color of interest area of the image, such as Replace Color dialog box, eyedropper tool (pages 89-92), Color palette group having a Swatch palette, brush, and etc (pages 229-245).

Regarding claim 8, Photoshop further has functions-heal brush and patch tools that can be used to retouch and change the colors with the same colors of the objects inside the image (pages 201-211).

Regarding claim 10, claim 10 is analogous and corresponds to claim 1. Photoshop is a software program that runs on a computer. For further explanation, refer claim 1 rejection.

Regarding claim 11, Yamakawa further discloses a computer readable medium that implements a method of image editing (claims 17-24).

Conclusion

7. No claims are allowed.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Wahnkyo Lee whose telephone number is (571) 272-9554. The examiner can normally be reached on Monday - Friday (Alt.) 7:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John W. Lee
(AU 2624)



JINGGE WU
SUPERVISORY PATENT EXAMINER